

Application Number 10/817,610  
Responsive to Office Action mailed September 20, 2006

### **REMARKS**

This amendment is responsive to the Office Action dated September 20, 2006. Applicant has amended claims 1, 5, 7, 14-16 and 25, added claim 27 and canceled claim 26. Claims 1-12, 14-23, 25 and 27 are pending.

### **Claim Rejection Under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 1, 12, 14, 16, 18, 22, 23, 25 and 26 under 35 U.S.C. §102(b) as being anticipated by Kreisel (US 2,691,297). Applicant respectfully traverses the rejection. Kreisel fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. §102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

#### *Claims 1 and 12*

With respect to claim 1, Kreisel fails to disclose a flow meter located in a flow path of the flow of the pressurized fluid. In contrast to the claimed invention, Kreisel discloses gauge 12. Gauge 12 is a differential fluid pressure gauge.<sup>1</sup> As such it does not provide for any transfer of fluid, but keeps two fluid pressures separate in order to compare them. In this manner, gauge 12 can not be said to be in a flow path of the flow of pressurize fluid.

Applicant has amended claim 1 to further clarify this point. As amended, claim 1 specifies that a first portion of the flow in the flow path in which the flow meter is located is conducted by a conduit to a DUT and a second portion of the flow is removed by a bleed orifice. As mentioned previously, there is no flow through gauge 12 and certainly not a flow including a first portion that is conducted by a conduit to a DUT and a second portion that is removed from the conduit by a bleed orifice. Furthermore, Kreisel includes two separate flows: a first flow through orifice 25 and a second flow through telephone receiver. These two flows are separated by cut-off cock 14 during testing of a telephone receiver.<sup>2</sup>

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<sup>1</sup> Kreisel, column 4, lines 3-10.

<sup>2</sup> Kreisel, column 4, lines 6-14.

Application Number 10/817,610  
Responsive to Office Action mailed September 20, 2006

Kreisel also fails to disclose an apparatus that determines a leak rate for the DUT by subtracting the selected removal rate from the determined flow rate. In contrast, Kreisel merely determines whether a leak rate is satisfactory or not.<sup>3</sup> Further, because Kreisel does not provide a flow including a first portion that is conducted by a conduit to a DUT and a second portion that is removed from the conduit by a bleed orifice, it certainly does not teach determining a flow rate of such a flow or using the determined flow rate in a determination of a leak rate.

Kreisel clearly fails to disclose each and every element as recited in claim 1 as required to support a proper rejection of claim 1 under 35 U.S.C. §102(b). Claim 12 is patentable for at least the reasons claim 1 is patentable. Applicant respectfully requests the Examiner withdraw the rejection of claims 1 and 12 under 35 U.S.C. §102(b) as being anticipated by Kreisel.

*Claims 14, 16, 18, 22 and 23*

With respect to claim 14, Kreisel fails to disclose measuring a flow rate of a flow of pressurized fluid with a flow meter located in a flow path of the flow of the pressurized fluid while providing a first portion of the flow of the pressurized fluid to a device under test (DUT) and diverting a second portion of the flow of the pressurized fluid away from the DUT at a selected removal rate. In contrast to the claimed invention, Kreisel fails to provide a flow including a first portion that is provided to a DUT and a second portion that diverted away from the DUT at a selected removal rate. Instead, Kreisel includes two separate flows: a first flow through orifice 25 and a second flow through telephone receiver. These two flows are separated by cut-off cock 14 during testing of a telephone receiver.<sup>4</sup>

Applicant has amended claim 14 to further clarify this point. As amended, claim 14 specifies that a first portion of the flow in the flow path in which the flow meter is located is conducted by a conduit to a DUT and a second portion of the flow is removed by a bleed orifice. As mentioned previously, there is no flow through gauge 12 and certainly not a flow including a first portion that is conducted by a conduit to a DUT and a second portion that is removed from the conduit by a bleed orifice.

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<sup>3</sup> Kreisel, column 3, lines 14-24 and column 4, lines 20-26.

<sup>4</sup> Kreisel, column 4, lines 6-14.

Application Number 10/817,610  
Responsive to Office Action mailed September 20, 2006

Kreisel also fails to disclose determining a leak rate for the DUT by subtracting the selected removal rate from the measured flow rate. In contrast, Kreisel merely determines whether a leak rate is satisfactory or not.<sup>5</sup> Further, because Kreisel does not provide a flow including a first portion that is conducted by a conduit to a DUT and a second portion that is removed from the conduit by a bleed orifice, it certainly does not teach determining a flow rate of such a flow or using the determined flow rate in a determination of a leak rate.

Kreisel clearly fails to disclose each and every element as recited in claim 14 as required to support a proper rejection of claim 14 under 35 U.S.C. §102(b). Claims 16, 18, 22 and 23 are patentable for at least the reasons claim 14 is patentable and included additional features not disclosed or suggested by Kreisel. Applicant respectfully requests the Examiner withdraw the rejection of claims 14, 16, 18, 22 and 23 under 35 U.S.C. §102(b) as being anticipated by Kreisel.

#### *Claim 25*

With respect to claim 25, Kreisel fails to an apparatus comprising a flow meter which determines a flow rate of a flow of pressurized fluid, a conduit which receives the flow of the pressurized fluid and conducts a first portion thereof to a data storage device housing and a bleed orifice which removes a second portion of the flow of the pressurized fluid from the conduit at a selected removal rate.

As one example, Kreisel neither discloses nor suggests a data storage device housing. The rejection cited a telephone receiver as being equivalent to the data storage device housing. However, a telephone receiver is clearly not the same as a data storage device housing as recited in claim 25. Furthermore, Kreisel neither discloses nor suggests such a feature. In the event the Examiner maintains this rejection, Applicant respectfully requests an explanation of how a telephone receiver may be considered within the scope of a data storage device housing as recited in claim 25.

As another example, Kreisel does not provide a flow including a first portion that is conducted by a conduit to a DUT and a second portion that is removed from the conduit by a bleed orifice. Instead, Kreisel includes two separate flows: a first flow through orifice 25 and a

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<sup>5</sup> Kreisel, column 3, lines 14-24 and column 4, lines 20-26.

Application Number 10/817,610  
Responsive to Office Action mailed September 20, 2006

second flow through telephone receiver. These two flows are separated by cut-off cock 14 during testing of a telephone receiver.<sup>6</sup>

Kreisel also fails to disclose determining a leak rate for the data storage device housing by subtracting the selected removal rate from the measured flow rate. In contrast, Kreisel merely determines whether a leak rate is satisfactory or not.<sup>7</sup>

Kreisel clearly fails to disclose each and every element as recited in claim 25 as required to support a proper rejection of claim 25 under 35 U.S.C. §102(b). Applicant respectfully requests the Examiner withdraw the rejection of claim 25 under 35 U.S.C. §102(b) as being anticipated by Kreisel.

#### **Claim Rejection Under 35 U.S.C. § 103**

In the Office Action, the Examiner rejected claims 1, 2, 4-7, 10-12, 14-16, 18-20 and 22 under 35 U.S.C. 103(a) as being unpatentable over Docy (US 6,298,712) in view of Wickham (US 3,948,083). The Examiner also rejected claims 8, 9 and 17 under 35 U.S.C. 103(a) as being unpatentable over Docy in view of Wickham as applied to claims 1 and 16, further in view of Lindeberg (US 3,818,752) and rejected claims 3 and 21 under 35 U.S.C. 103(a) as being unpatentable over Docy in view of as applied to claim 2 and 20, further in view of Ledeen (US 5,708,193). The Examiner rejected claims 23, 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over Docy in view of Wickham as applied to claim 14, further in view of Macpherson (US2005/0036232). The Examiner also rejected claims 11 and 19 under 35 U.S.C. 103(a) as being unpatentable over Kreisel.

Applicant respectfully traverses the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

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<sup>6</sup> Kreisel, column 4, lines 6-14.

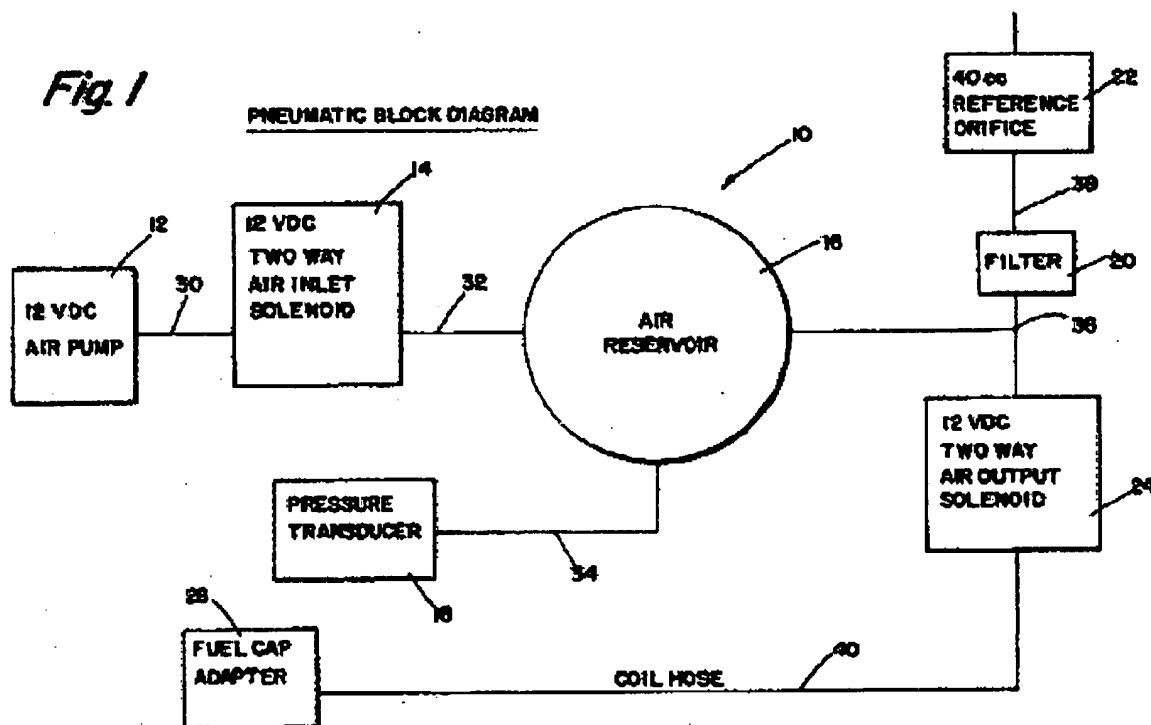
<sup>7</sup> Kreisel, column 3, lines 14-24 and column 4, lines 20-26.

Application Number 10/817,610

Responsive to Office Action mailed September 20, 2006

*Claims 1-12, 14-23 and 25*

With reference to independent claims 1, 14 and 25, for example, the Examiner acknowledged that Docy does not disclose a flow meter in the flow path of the flow of the pressurized fluid, but stated that Wickham teaches the equivalence of in-line flow meters to the pressure transducer of the Docy. However, replacing the pressure sensor in Docy would not result in the Applicant's invention as recited by claims 1, 14 and 25. For reference, FIG. 1 of Docy is reproduced below.



As shown above, pressure transducer 18 is located in tubing 34, which is not equivalent to the flow paths specified in Applicant's claims. Replacing pressure transducer 18 with an in-line flow meter would not result in measurement of a flow including a first portion that is conducted by a conduit to a DUT and a second portion that is removed from the conduit by a bleed orifice. Instead, it would result in a measurement of a flow in tubing 34. Clearly, this flow is not equivalent to the flow as specified in Applicant's claims.

Claims 2-12 and 14-23 are allowable over Docy in view of Wickham for at least the reasons independent claims 1 and 14 are allowable as stated herein. Furthermore, claims 2-12 and 15-23 include additional features not suggested or made obvious by the cited prior art.

Application Number 10/817,610  
Responsive to Office Action mailed September 20, 2006

For example, with respect to claims 8 and 17, the Examiner cited Lindeberg as teaching the use of flow meters based upon the desired flow rates to be sensed. The Examiner also stated that, "applicant's specification further mentions that some flow meters 'have been found to be generally more accurate in the mid-range' . . . This appears to indicate that one having ordinary skill in the art would be familiar with the advantages of mid-range operation." Applicant strongly disagrees with this characterization as the Examiner is clearly using the Applicant's own disclosure in support of the rejection, which constitutes impermissible hindsight. Furthermore, to the extent that the term "mid-range" is not defined with any precision in the specification, the Examiner should interpret it according to its ordinary meaning. Instead, the rejection supposes that the term, "mid-range" is equivalent to "operational range", which is inconsistent with the ordinary meaning of the term mid-range.

The Examiner further cited *In re Aller*,<sup>8</sup> as holding that, "where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art." However, the Examiner's citation of *In re Aller* is inconsistent with the holding in *In re Antonie*,<sup>9</sup> which requires that a particular parameter must first be recognized as a result-effective variable. Because a value of a flow rate has not been determined to be a result effective variable regarding the accuracy of a measurement of the flow rate outside of Applicant's specification, the holding of *In re Aller* cited by the Examiner is not applicable to the rejection of claims 8 and 17.

In this regard, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 8 and 17 under 35 U.S.C. 103(a).

#### *Claims 11 and 19*

Claims 11 and 19 are allowable over Kreisel for at least the reasons independent claims 1 and 14 are allowable over Kreisel as stated herein. In light of the obvious differences between the subject matter recited by claims 1 and 14 and the disclosure of Kreisel, Applicant reserves further comment with respect to claims 11 and 19.

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<sup>8</sup> 220 F.2d 454, 105 USPQ 233.

<sup>9</sup> 559 F.2d 618, 195 USPQ 6; *see* MPEP 2144.05.

DEC 20 2006

Application Number 10/817,610  
Responsive to Office Action mailed September 20, 2006

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 1-12, 14-23 and 25 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

#### New Claim

Applicant has added claim 27 to the pending application. The references fail to disclose or suggest wherein the data storage device housing includes an aperture that provides fluidic engagement the first portion of the flow, further comprising sealing the aperture after determining the leak rate, as recited by claim 27.

No new matter has been added by the new claim 27. For example, support for claim 27 may be found at page 7, lines 15-19 of the Applicant's specification.

#### CONCLUSION

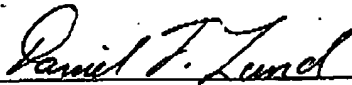
All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Applicant does not acquiesce with any of the Examiner's current rejections or characterizations of the prior art, and reserves the right to further address such rejections and/or characterizations. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

By:

December 20, 2006

SHUMAKER & SIEFFERT, P.A.  
8425 Seasons Parkway, Suite 105  
St. Paul, Minnesota 55125  
Telephone: 651.735.1100  
Facsimile: 651.735.1102

  
Name: Daniel T. Lund  
Reg. No.: 58,614